

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SAFEWAY INC.,

Plaintiff,

-against-

PURDUE PHARMA, L.P., THE PURDUE  
FREDERICK COMPANY, PURDUE  
PHARMACEUTICALS, L.P., P.F.  
LABORATORIES INC., THE PURDUE PHARMA  
COMPANY, and EUROCELTIQUE, SA,

Defendants.  
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06 Civ. 15326 (SHS)

ORDER

SIDNEY H. STEIN, U.S. District Judge.

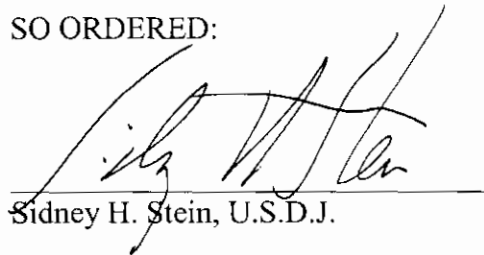
Plaintiff Safeway, Inc. brings this declaratory judgment action against Purdue Pharma, L.P., the Purdue Frederick Company, Purdue Pharmaceuticals, L.P., P.F. Laboratories Inc., the Purdue Pharma Company, and Euroceltique, SA (collectively "Purdue") pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202. Safeway seeks a declaration that Purdue's patents protecting a controlled-release oxycodone pain reliever sold under the brand name OxyContin are invalid and unenforceable. Purdue has moved to dismiss Safeway's complaint pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction or, in the alternative, for a stay of these proceedings pursuant to this Court's inherent powers.

For the reasons stated in the Opinion and Order dated August 21, 2007 in the related case Rite Aid Corp. v. Purdue Pharma, L.P., The Purdue Frederick Company, Purdue Pharmaceuticals, L.P., P.F. Laboratories Inc., The Purdue Pharma Company, and Euroceltique, No. 06 Civ. 15304 (SHS), the patent-infringement issues raised in this

action do not present a “case of actual controversy” pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201(a); to the extent that Safeway presses antitrust claims in this action, the Court exercises its discretion to decline jurisdiction over those claims in light of Safeway’s pending antitrust suit against Purdue, Albertson’s, Inc., Hy-Vee, Inc., Safeway Inc. v. The Purdue Pharma Company, Perdue Pharma L.P., The Purdue Frederick Company, and P.F. Laboratories Inc., No. 04 Civ. 9649 (SHS). Therefore, Purdue’s motion to dismiss [5] Safeway’s complaint without prejudice is granted.

Dated: New York, New York  
August 21, 2007

SO ORDERED:



Sidney H. Stein, U.S.D.J.